

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Enamidem Celestine Okon,

Civil No. 18-191 (DWF/TNL)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Nate Knutson,

Respondent.

This matter is before the Court upon Petitioner Enamidem Celestine Okon's ("Petitioner") objections (Doc. No. 17) to Magistrate Judge Tony N. Leung's January 22, 2019 Report and Recommendation (Doc. No. 14) insofar as it recommends that: (1) Respondent's Motion to Dismiss be granted; (2) this matter be dismissed without prejudice for lack of jurisdiction; and (3) no certificate of appealability be issued.

The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections. In the Report and Recommendation, the Magistrate Judge considered Petitioner's habeas petition under § 2254, finding that Petitioner's substantive arguments were presented and addressed in a prior petition and that the dismissal of the Petition is warranted. As to Petitioner's argument regarding his federal-law confrontation rights, the Magistrate Judge explained that Petitioner received review of that issue. The Magistrate Judge recommends dismissal of the present petition because its substantive grounds have been previously presented to this Court in a prior application

and § 2244(b) compels dismissal, without prejudice, for lack of jurisdiction. In addition, the Magistrate Judge discussed Petitioner's arguments in response to Respondent's motion to dismiss, including Petitioner's "ends of justice" argument and his position that the successive-petition bar of § 2244(b)(1) should not apply, and found them unavailing. Finally, the Magistrate Judge recommended that Petitioner not be granted a certificate of appealability ("COA") in this matter.

Petitioner objects to the Report and Recommendation, arguing that his first ground for relief is a "new error" and cannot be construed as a second or successive application. In addition, Petitioner objects on the grounds that the "ends of justice" have not been satisfied because the Minnesota state court did not conduct a harmless-error analysis under the confrontation clause and because the Court should apply the "substantial and injurious effect" to the confrontation clause claim. Finally, Petitioner argues that the Court should remand the confrontation clause issue back to the state court or that this Court should reconsider the merits of the confrontation clause claim under the "ends of justice" standard and grant habeas relief.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). After this review, the Court finds no reason to depart from the Magistrate Judge's recommendations, which are both factually and legally correct. In particular, the Magistrate Judge correctly determined that the substantive grounds of the Petition were

previously presented in a prior application and, therefore, the Court lacks jurisdiction under § 2244(b)(1)'s bar on second-or-successive claims. Petitioner has separately filed an Application for COA and/or Remand. (Doc. No. 21.) An appeal cannot be taken from a final order in a habeas corpus proceeding without a COA. 28 U.S.C.

§ 2253(c)(1)(B); Fed. R. App. P. 22(b)(1). A court cannot grant a COA unless the applicant has made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The Court has reviewed the Magistrate Judge's recommendation that no COA be granted and has separately considered whether issuance of a COA is appropriate. After a careful review of the record, the Court concludes that the Petitioner has not raised any issue that is "debatable among reasonable jurists" or that "deserve[s] further proceedings." *Flieger v. Delo*, 16 F.3d 878, 882-83 (8th Cir. 1994) (citing *Lozado v. Deeds*, 498 U.S. 430, 432 (1991) (*per curiam*)). Petitioner has not, therefore, made the "substantial showing of the denial of a constitutional right" necessary for the issuance of a COA. 28 U.S.C. § 2253(c)(2). Thus, Petitioner's Application for COA is properly denied. Moreover, remand is unwarranted.

Therefore, as discussed above and based upon the *de novo* review of the record and the arguments and submissions of the parties, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Petitioner Enamidem Celestine Okon's objections (Doc. No. [17]) to Magistrate Judge Tony N. Leung's January 22, 2019 Report and Recommendation are **OVERRULED**.

2. Magistrate Judge Tony N. Leung's January 22, 2019 Report and Recommendation (Doc. No. [14]) is **ADOPTED**.

3 Respondent's Motion to Dismiss (Doc. No. [11]) is **GRANTED**.

4. This matter is **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.

5. Petitioner's Application for COA and/or Remand (Doc. No. [21]) is **DENIED**.

6. A certificate of appealability will not be issued.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 20, 2019

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge